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# **Overview of FAR Case 2004-025**



**Office of the Under  
Secretary of Defense  
(Acquisition, Technology  
and Logistics) Property &  
Equipment Policy Office**

**June 18, 2007**

# Problem/Purpose

- **Problem:** current FAR (property) language is well over 50 years old; contains inconsistent, often conflicting language; is at odds with modern materials management and technology
- **Purpose:** revise the FAR (Property Management) requirements to create an approach that fosters efficiency, innovation, and creativity

# Background

- **Original Proposal: 1994**
- **DoD assembled a team to address Government and industry concern regarding contract property**
- **Effort moved along; public hearings were held, but no real consensus was achieved**

# Background (cont.)

- **Second Proposal: 2000**
- **Another team established**
- **Again, no real consensus was achieved; the legalities and complexities revealed deep divisions between Government and Industry**

# Background (cont.)

- **Third Proposal: FAR Case 2004-025**
- **A new vision—based on:**
  - FAR Guiding Principles; and
  - A deep commitment to making it happen
  - Lessons learned
- **Broad spectrum of subject matter experts sought**
- **Large outreach campaign**

# Background (cont.)

- **Primary Clauses: 52.245-2 and 52.245-5 were mostly identical except for title and liability**
- **Restructuring the language allowed us to combine into one clause**
- **No change to title or liability policy**
- **One clause is “goof proof” and a lot easier to deal with**



# What's in

- **One basic clause: 52.245-1 - Government Property**
- **Used in:**
  - **All cost-reimbursement, time and material, and labor hour type solicitations and contracts**
  - **All fixed-price solicitations and contracts when the Government will provide Government Property**
  - **All Contracts or modifications awarded under FAR Part 12 procedures where Government Property that exceeds the simplified acquisition threshold**

# What's in (cont.)

- **52.245-1 has two Alternates:**

- **ALTERNATE 1: used in contracts with adequate price competition, i.e., Fixed Price, i.e., “Plain Vanilla” contracts**

**Why? Different liability provision. For such contracts, the contractor is liable for loss, damage, destruction, theft. Otherwise, we self-insure (default setting)**

- **ALTERNATE 2: used in contracts involving basic or applied research at non profit institutions of higher education or non profit organizations involved in scientific research**

**Why? Different title vesting provisions (statutory)**



# What's in (cont.)

- **52.245-2 - Government Property (Installations Operation Services)**
  - **Used in service contracts to be performed on a Government installation when Government-Furnished property will be provided**
  - **This Clause provides for the initial provisioning of property; the Government is not responsible or repair or replacement**

# What's Out

- 52.245-3 – Identification of Government-Furnished Property
- 52.245-4 – Government-Furnished Property [Short Form]
- 52.245-19 – Government Property Furnished [As Is]
- 52.245-6 – Liability for Government Property (Demolition Services)
- 52.245-7 – Government Property (Consolidated Facilities)
- 52.245-8 – Liability for the Facilities
- 52.245-10 – Government Property (Facilities Acquisition)
- 52.245-11 – Government Property (Facilities Use)
- 52.245-12 – Contract Purpose (Nonprofit Educational Institutions)
- 52.245-13 – Accountable Facilities (Nonprofit Educational)
- 52.245-14 – Use of Government Facilities
- 52.245-15 – Transfer of Title to the Facilities
- 52.245-16 – Facilities Equipment Modernization.
- 52.245-17 – Special Tooling
- 52.245-18 – Special Test Equipment

# Highlights

- **Eliminated obsolete, unnecessary language (e.g., records of ST, STE, etc.)**
- **Restructured language as performance outcomes, based on property lifecycle, i.e., acquisition thru disposal/contract closeout**
- **Over 80% of current FAR (property) language eliminated, including 15 clauses**

# Highlights

- **One basic Government property clause for all contractor requirements**
- **Part 45 is now strictly limited to requirements placed upon the Government**
- **Contractor managed self-assessment programs**
- **No more property control system approvals**
- **Does not apply to intellectual property or software or progress/advanced payments**
- **Greater justification for furnishing GP**

# Providing Government Property

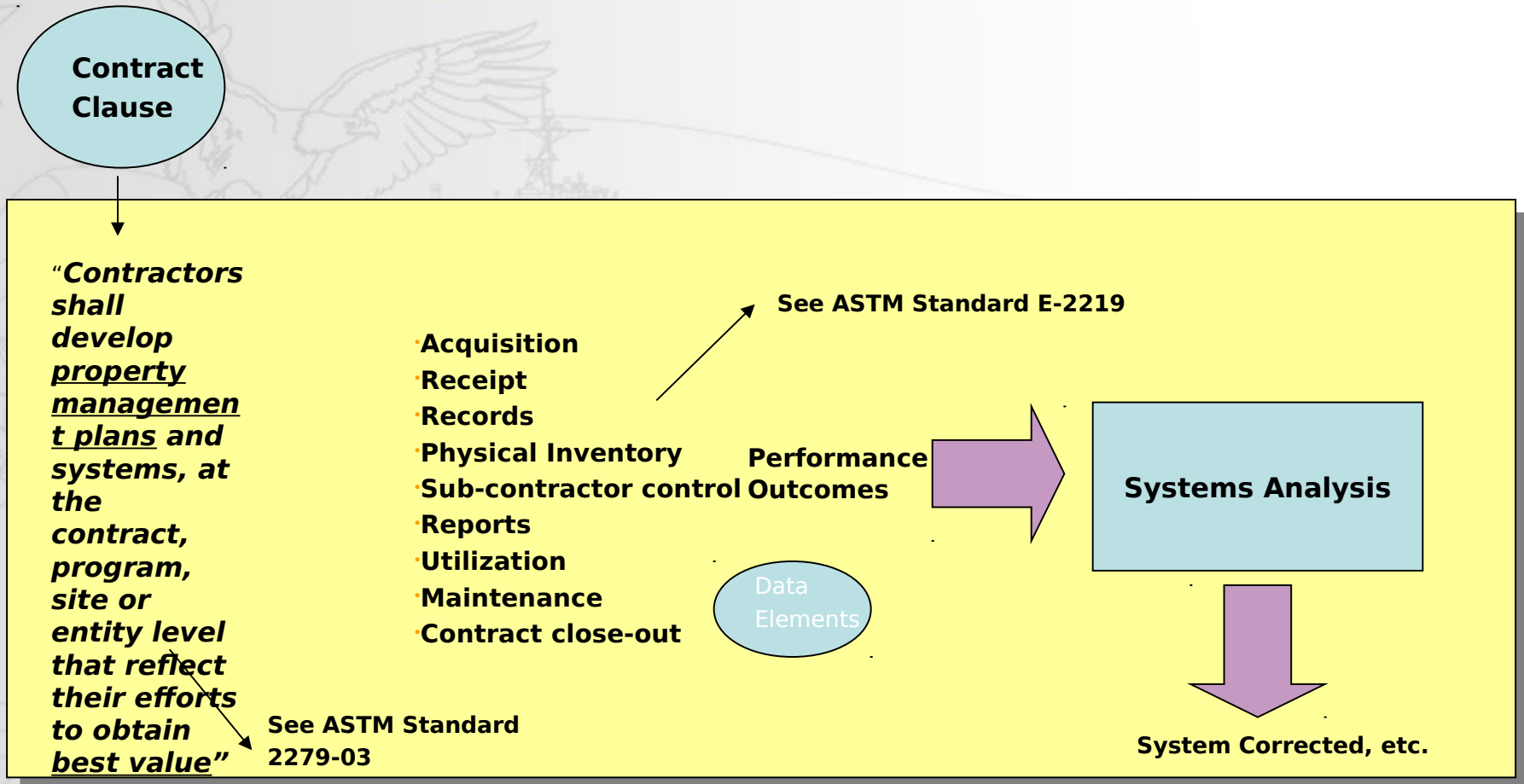
## ▪ 45.102 Policy

“Contracting officers shall provide property to contractors only when it is clearly demonstrated --

- (1) To be in the Government's best interest;
- (2) That the overall benefit to the procurement significantly outweighs the increased cost of administration, including ultimate property disposal;
- (3) That providing the property does not substantially increase the Government's assumption of risk; and
- (4) That Government requirements cannot otherwise be met.”

# SIGNIFICANT CHANGE

# The Process





# Contractor Responsibilities

## ▪ **52.245-1 Government Property**

*“The Contractor shall have a system to manage (control, use, preserve, protect, repair and maintain Government property in its possession.”*

*“The Contractor shall initiate and maintain the processes, systems, records, and methodologies necessary for effective control of Government property...consistent with voluntary consensus standards and/or industry-leading practices and standards for Government property management.”*

# Voluntary Consensus Standards

The Federal Acquisition Regulations (FAR) Part 11 describes agency needs and addresses the use of Voluntary Consensus Standards in writing the government's requirements.

**OMB Circular A-119** and the **FAR** mandate the use of voluntary consensus standards in lieu of government-unique standards. The use of existing standards provides substantial cost benefits for the government.

# e.g., Voluntary Consensus Standards

- ISO 9000 “Generic” -- applicable to any organization, large or small, product or service, Government or industry
  - **Identification of Processes**
  - **Written procedures, etc., ability to audit**
- ASTM International
  - **14 Standards applicable to Property Management**

# Government Responsibilities

- **45.105 Analysis of Contractor's Property Management System**

***a) “The agency responsible for contract administration shall conduct an analysis of the contractor’s property management policies, procedures, practices, and system***

***b) The property administrator shall notify the contractor in writing when the contractor's property management system does not comply with contractual requirements, and shall request prompt correction of deficiencies..." Failure to take corrective action may result in:***

**- Revocation of the Government's assumption of risk**

### ***- Other rights and remedies available to the***

# Government Responsibilities (cont.)

- **The Contracting Officer can revoke the Government's assumption of risk when contractor's property management practices are inadequate or present an undue risk to the Government**
- **This is equivalent to the old concept of "withdrawing" the approval of a contractor's property control system**



# Responsibility and Liability

- **45.104 - Responsibility and Liability of Government Property**
- **No change in title provisions.** Generally, contractors are not held liable for loss, damage, destruction, or theft of Government, under the following types of contracts:
  - **Cost - reimbursement contracts**
  - **Time and Material contracts**
  - **Labor-hour contracts**
  - **Fixed-price contracts awarded on the basis of submission of cost and pricing data**
- **The Government acts as a self insurer. In other words, the Government assumes the risk (less willful misconduct, etc.)**
- **Exception: i.e., “Plain Vanilla” fixed price**



# Title

- **No change in title provisions**
- **Fixed price: contractor retains title to property acquired (except for deliverable end items)**
- **Cost type/time and material: Government takes title to property to which the contractor is entitled to reimbursement**

# Self Assessments

**“The contractor shall establish and maintain procedures necessary to assess its property management system effectiveness, and shall perform periodic internal reviews and audits. Significant findings and/or results of such reviews and audits pertaining to Government property shall be made available to the Property Administrator**

- **MAY Flow down the Limited Risk of Loss provision in**
- **non-competitive subcontracts and purchase orders, where cost or pricing data is required. No Government approval is necessary to perform this act - ala the OLD approval process.**
- **b. SHALL include the FULL Risk of Loss provision in**
- **competitive subcontracts and purchase orders where cost or pricing data is NOT required. No Government approval is required... for this action.**

# Flow Down of Liability Provisions

- Some Clarification:
  - **The Prime is expected to flow down the “APPROPRIATE” contract terms and conditions... e.g., extent of liability for LDD&T.**
  - **In other words the Prime is expected to:**
    - **Flow Down LIMITED RISK OF LOSS in NON-Competitive POs and Subcontracts**
    - **Flow Down FULL RISK OF LOSS in COMPETITIVE POs and Subcontracts**

# Next Steps

- **Modification of existing contracts**
- **Contract Property Manual (4161.2-M)**
- **DFAR**
- **PGI**



**Questions or Comments?**